THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO.1485 OF 2005

18th November 2006

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 04.07.2005 in W.P.NO.21240 OF 2002 on the file of the High Court.)

Between:

Syed Inayat Ali, S/o.Syed Ameer Ali, 39 years, Ex-Conductor (E.No.253345), R/o.8-28, Old Tangapore Street, Atchampet (Mandal), Mahabunagar District.

...APPELLANT

AND

1. The Presiding Officer, Industrial Tribunal, Labour Court-III, Hyderabad.

And one other.

...RESPONDENTS

THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NO.1485 of 2005

JUDGMENT: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

This appeal is filed aggrieved by the order in W.P.No.21240 of 2002 dated 04.07.2005, whereby the challenge to the award passed by the Industrial Tribunal-cum-Labour Court-III, Hyderabad in I.D.No.40 of 2000 was rejected.

In his order, in W.P.No.21240 of 2002 dated 04.07.2005, the learned Single Judge held that the enquiry conducted by the enquiry officer was valid, that on perusal of record, and after considering the charges levelled against the petitioner-workman, the Tribunal had exercised its discretion under Section 11-A of the Industrial Disputes Act, 1947 ('the Act' for brevity) and as the evidence on record established the charges, especially that there was financial irregularity, the petitioner did not deserve any sympathy and that was the reason why the Tribunal did not interfere with the punishment imposed by the disciplinary authority.

Sri Poodattu Amarender, learned counsel for the appellant-workman, would submit that for minor irregularities, i.e., collecting excess amounts and for having issued tickets for lesser denomination, the punishment of removal from service was excessive and ought not to have been given. Learned counsel submits that the appellant was denied reasonable opportunity of defending himself during the domestic enquiry, that he was not even given a defence representative, that the enquiry officer had not analyzed the evidence properly and that the second show cause notice issued by the disciplinary authority was vitiated as even at that stage, the discretion to impose punishment of removal from service had already been taken.

A perusal of the award, and the order of the learned Single Judge, would reveal that the enquiry officer had considered the evidence on record in detail. On re-appreciating the evidence on record, the Tribunal had rightly come to the conclusion that the petitioner herein was guilty of charges levelled against him. With regards the contention that the appellant was not given the assistance of a defence representative in the domestic enquiry, it is necessary to note that the Tribunal upheld the validity of the domestic enquiry,

which order is not even, subject to challenge in these writ proceedings. As such, we are not inclined to examine the question of denial of reasonable opportunity in the enquiry, and that the Tribunal ought to have held that the domestic enquiry was vitiated, at the appellate stage.

Sri P.Amarender, learned counsel for the appellant, would fairly submit that insofar as his contention with regard to the second show cause notice is concerned, it is being raised for the first time before this Court at the appellate stage as a question of law, even if it be for the first time could be raised at the appellate stage. This contention is only to be noted to be rejected. All these matters ought to have been urged before the Tribunal, prior to the preliminary issues regarding the validity of the domestic enquiry having been examined, and not subsequent thereto.

Sri P.Amarender, learned counsel for the appellant, would submit that since the appellant had earlier preferred an appeal to the departmental appellate authority, which is still pending, instead of affirming the order of the learned Single Judge, the appellant should be given the opportunity of agitating his appeal before the appellate authority of the respondent-Corporation. After having preferred an

appeal, the appellant instead of pursuing the same chose to invoke the jurisdiction of the Tribunal filing an application under Section 2A (2) of the Act. It is therefore not open for him to now contend that since his appeal is still pending, the Tribunal or the learned Single Judge ought not to have examined the matter on merits and should have relegated him to the alternate remedy of a departmental appeal. With regards the contention that the punishment imposed is grossly disproportionate, the charges held established relate to collecting fare and issuing tickets for lesser amount, in effect, misappropriation of public funds. The punishment imposed on the appellant, of removal from service, is commensurate to the charges held established.

There are no merits in the above appeal. The Writ Appeal is accordingly dismissed. No costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

18th November 2006
RRB

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